

IN RE: Van Shaver, et ux)
Map 11, Control Map 11, Parcel 179.00) Loudon County
Residential Property)
Tax Year 2005)

Statement of the Case

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$26,800	\$174,000	\$200,800	\$50,200

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The taxpayer contended that subject property should be valued at \$160,000. In support of this position, the taxpayer argued that the 2005 countywide reappraisal caused the appraisal of subject property to increase excessively. In addition, the taxpayer introduced an appraisal report prepared by Donnie Davis which valued subject property at \$160,000 as of January 3, 2005. Mr. Davis was not present at the hearing.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$200,800 based upon the presumption of correctness attaching to the decision of the Loudon County Board of Equalization.

Since the taxpayer is appealing from the determination of the Loudon County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

The administrative judge finds Mr. Shaver made it very clear that he is not familiar with the appraisal process and was relying on Mr. Davis' appraisal report as the basis for his contention of value. The administrative judge finds that Mr. Davis was not present to testify or undergo cross-examination. The administrative judge finds that Ms. Smith raised certain legitimate questions about the appraisal report that were left unanswered. The administrative judge finds that the Assessment Appeals Commission has refused to consider appraisal reports in similar circumstances. See, e.g., the oft-cited case of *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and

be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

Based upon the foregoing, the administrative judge finds that the taxpayer introduced insufficient evidence to establish the fair market value of subject property as of January 1, 2005. Accordingly, the administrative judge finds that the current appraisal of subject property must be presumed correct absent additional evidence from the taxpayer.

The administrative judge finds that it is technically unnecessary to address Ms. Smith’s proof since Mr. Shaver failed to establish a prima facie case. However, the administrative judge finds it appropriate to note that Ms. Smith did indeed introduce comparable sales which seemingly support the current appraisal of subject property.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$26,800	\$174,000	\$200,800	\$50,200

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

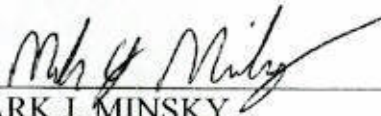
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order.

The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 4th day of April, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Van Shaver
Doyle E. Arp, Assessor of Property